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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,384	02/08/2002	Paul Gruber	AT 010002	1766

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EXAMINER

BALSIS, SHAY L

ART UNIT PAPER NUMBER

1744

DATE MAILED: 04/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/071,384

Applicant(s)

GRUBER, PAUL

Examiner

Shay L Balsis

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Viltro et al. (USPN 6648641).

Viltro teaches a vibrating toothbrush comprising a body (120), a brush member (110) mounted on the body, a brush head (113) supported by the brush member, an additive outlet, two additive containers (131) and a drive means for generating vibration (250). At least one additive can be either manually or automatically selected during use of the toothbrush. If the additive is manually selected, the toothbrush has a switch (312, 313) that is movable between a first and second position for selecting a first and second additive flow from the additive containers. If automatically selected, there is a motor driven to activate the additive flows and dispense the dental treatments in certain quantities or ratios or even at a certain time during brushing.

Art Unit: 1744

4. Claims 1-3, 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Dixon (USPN 5286192).

Dixon teaches a vibrating toothbrush comprising a body (13), a brush member (20) mounted on the body, a brush head (18) supported by the brush member, an additive outlet (40), two additive containers (42-45) and a drive means for generating vibration (30). The toothbrush has a switch (46) that is movable between a first and second position for selecting a first and second additive flow from the two additive containers. Additionally, a motor (27) is provided to activate the additive flows. There is a charging means (29) to charge the toothbrush and also a means (38) to refill the toothbrush with the additives.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cannarella (USPN 4060870)

Cannarella teaches a sonic toothbrush comprising a body (10), a brush member (12) mounted on the body, a brush head (44) supported by the brush member, an additive outlet (54, 56), two additive containers (20, 22) and a drive means for generating sonic frequency (28, 30). The toothbrush has a switch (46) that is movable between a first and second position for selecting a first and second additive flow from the two additive containers. There is a charging

Art Unit: 1744

means (48) to charge the toothbrush and also a means (50, 52, col. 2, lines 60, col. 3, lines 6) to refill the toothbrush with the additives. Cannarella does not specifically teach a charging base however it would have been obvious to use a charging base as the charging means. Cannarella states that the battery may be a rechargeable battery that can be charged from an external source (col. 3, lines 46-54). It would have been within the level of ordinary skill in the art to use a charging base as the means for recharging the batteries.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cannarella in view of Viltro et al.

Cannarella teaches all the essential elements of the claimed invention however fails to teach that the additives are automatically selected during use of the toothbrush. Viltro teaches a toothbrush with cartridges that are adapted for dispensing equal or different amounts of additives. Additionally, the cartridges may dispense additives based on timing. For example, if there was four additives, A, B, C, D the cartridge would sequentially dispense additive A, then additive B, then additive C, and finally additive D. Additionally, the cartridge may dispense based on a number of repeatable sequences. It would have been obvious to one of ordinary skill in the art at the time the invention was made to allow Cannarella's invention to release the additive automatically during brushing without having to manually activate a switch. Therefore, the additives would be added to the brushing process at the correct time, eliminating human error. It would be impossible to forget to apply any of the additives because the brush would do it automatically. Additionally, the brush conveniently assures that the application of only therapeutic amounts, which sometimes require precision dosing or precision ratio control, would be used.

Art Unit: 1744

8. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klupt (USPN 5321866) in view of Cannarella and Klupt in view of Dixon.

Klupt teaches a vibrating toothbrush comprising a body (14), a brush member (12) mounted on the body, a brush head (20) supported by the brush member, an additive outlet (82), an additive container (28) and a drive means for generating vibration (38). Additionally, a motor (40) is provided to activate the additive flow. There is a charging means (not shown, col. 5, lines 49-56)) to charge the toothbrush batteries (42) and also a means (100) to refill the toothbrush with the additives. Klupt teaches all the essential elements of the claimed invention however fails to teach an additional additive container. Klupt states that the toothbrush system is capable to have a plurality or multiplicity of reservoirs, which may be mounted on the holder to automatically fill the cleaning liquids into the toothbrush (col. 1, lines 65-col. 2 line 2).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to allow the toothbrush to accommodate more than one additive or cleaning liquid since the refill base can. Cannarella and Dixon both teach two additive containers to allow for multiple liquids to be supplied such as toothpaste and mouthwash, saving time and energy.

9. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cannarella in view of Klupt (USPN 5321866).

Cannarella teaches all the essential elements of the claimed invention however Cannarella fails to teach a base with refilling capabilities. Cannarella teaches that the additive is filled from the bottom through two apertures (16, 18). Klupt teaches a toothbrush refilling means. The toothbrush is set on a base (100) that is filled with the additive. The additive flows through a conduit (102) to the toothbrush where it is then stored in an additive container (28). It would

Art Unit: 1744

have been obvious to use a refilling base as the means to refill Cannarella's invention to allow for easy, automatic filling without creating a mess (Klupt, col. 1, lines 55-64).

10. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dixon in view of Klupt (USPN 5321866).

Dixon teaches all the essential elements of the claimed invention however fails to teach a base with refilling capabilities. Dixon teaches that the additive is filled from a side access door (38). Klupt teaches a toothbrush refilling means. The toothbrush is set on a base (100) that is filled with the additive. The additive flows through a conduit (102) to the toothbrush where it is then stored in an additive container (28). It would have been obvious to use a refilling base as the means to refill Dixon's invention to allow for easy, automatic filling without creating a mess (Klupt, col. 1, lines 55-64).

#### *Applicant's Arguments*

11. a. None of the references teach manual or automatic selection of an additive during use of the toothbrush.

b. None of the references cited teach a refill unit-charging apparatus configured to refill and charge at the same time.

#### *Response to Arguments*

12. a. Dixon and Cannarella both teach manual selection of an additive. The selection of an additive can be made before or during use of the toothbrush. For example, if the user wanted to activate an additive there is no restraint stopping the user from switching additives during usage. With Dixon's invention, the user just has to slide the bar (46) to adjust what additive they prefer to use (col. 4, lines 11-31). This can be done when the toothbrush is in use.

Art Unit: 1744

Additionally, Cannarella teaches two switches that can also be activated at any time during usage (col. 2, lines 9-13).

b. Applicant states that none of the references teach a refill unit charging apparatus however with the combination of the Klupt reference a refill unit charging apparatus is obvious. As stated above, both Dixon and Cannarella teach a base that recharges the toothbrush and Klupt teaches a base that refills the toothbrush. Therefore the combination of references teaches the claimed invention.

### *Conclusion*

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Applicant has amended claim 1 to include the limitation that the additive is manually or automatically selected during use of the toothbrush. This limitation requires further search and consideration. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



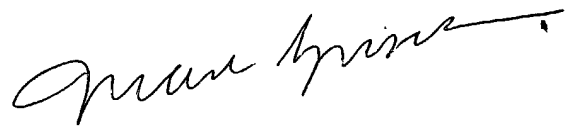
Art Unit: 1744

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L Balsis whose telephone number is 571-272-1268. The examiner can normally be reached on 7:30-5:00 M-Th, alternating F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Slb  
3/23/04



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